

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA  
AT MARTINSBURG**

**BRANCH BANKING AND  
TRUST COMPANY,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 3:18-CV-83 (Groh)**

**BUILDERS UNLIMITED, INC.,  
a West Virginia Corporation,  
CHAD E. JOHNSON, and  
KELLY K. JOHNSON,**

**Defendants.**

ELECTRONICALLY  
FILED  
May 24 2018  
U.S. DISTRICT COURT  
Northern District of WV

**VERIFIED COMPLAINT**

Plaintiff Branch Banking and Trust Company, by its counsel, states as follows for its Complaint against the defendants Builders Unlimited, Inc., Chad E. Johnson and Kelly K. Johnson:

**PARTIES**

1. Plaintiff Branch Banking and Trust Company ("Bank") is a banking corporation organized and existing under the laws of the State of North Carolina with its principal place of business located at 200 W. 2<sup>nd</sup> Street, Winston Salem, North Carolina 27101.

2. Defendant Builders Unlimited, Inc. ("Builders Unlimited" or "Borrower") is a West Virginia corporation, with its principal place of business located at 1620 Earle Road, Charles Town, West Virginia. According to the West Virginia Secretary of State's website, it can be served by serving its President, Chad E. Johnson.

3. Defendant Chad E. Johnson ("Chad Johnson") is the President of Builders Unlimited and is a citizen and resident of Charles Town, Jefferson County, West Virginia.

4. Defendant Kelly K. Johnson ("Kelly Johnson") is the Secretary of Builders Unlimited and is a citizen and resident of Charles Town, Jefferson County, West Virginia.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over these parties and this civil action pursuant to 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different States.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to the claim occurred in this District.

7. In addition, pursuant to that certain Loan Agreement executed December 16, 2005 ("Loan Agreement"), a copy of which is attached as **Exhibit A** and incorporated herein by reference, the parties agreed that any dispute would be submitted to the Circuit Court of Berkeley County, West Virginia, or the United States District Court for the Northern District of West Virginia. Ex. A, § 10.15.

### **RELIEF REQUESTED**

#### **Note #49:**

8. Builders Unlimited, Inc., by its President, Chad E. Johnson, executed a Promissory Note dated December 16, 2005, payable to the Bank, in the original principal amount of \$1,640,000.00. The Promissory Note was modified by certain Note Modification Agreements dated January 22, 2008, August 25, 2008, and August 2, 2010. Together, the Promissory Note and the Note Modification Agreements, copies of which are attached as **Exhibit B** and incorporated herein by reference, are referred to as "Note #49."

9. Note #49 matured November 10, 2010, at which time all outstanding principal, accrued and unpaid interest, plus any fees and charges, became due and payable to the Bank.

Builders Unlimited has liquidated all of the collateral that secured Note #49. After application of the proceeds of liquidation, a balance remains due and owing to the Bank.

10. As of May 24, 2018, Builders Unlimited was indebted to the Bank under the terms of Note #49 in the principal sum of \$693,017.90, plus accrued interest of \$371,421.01, and fees of \$71,578.58, for a total of \$1,136,017.49. Note #49 is continuing to accrue interest at a daily rate of \$105.88 per day.

**Note # 50/67:**

11. Builders Unlimited, Inc., by its President, Chad E. Johnson, executed a second Promissory Note dated December 16, 2005, payable to the Bank, in the original principal amount of \$318,359.71. The Promissory Note was modified by a certain Note Modification Agreement dated December 16, 2009. Together, this second Promissory Note and Note Modification Agreement, copies of which are attached as **Exhibit C** and incorporated herein by reference, are referred to as "Note #50/67."

12. Note #50/67 is payable upon demand. On March 30, 2018, the Bank, through its undersigned counsel, made demand for payment of Note #50/67, as well as Note #49. A copy of the letter of demand, dated March 30, 2018, is attached as **Exhibit D** and incorporated herein by reference. The balance outstanding on Note #50/67 remains due and owing.

13. As of May 24, 2018, Builders Unlimited was indebted to the Bank under the terms of Note #50/67 in the principal sum of \$53,526.00, plus accrued interest of \$16,322.09, for a total of \$69,848.09. Note #50/67 is continuing to accrue interest at a daily rate of \$8.55 per day.

14. On December 16, 2005, Chad Johnson and Kelly Johnson each executed a Guaranty Agreement (together "Guaranty Agreements"), pursuant to which each of them

absolutely and unconditionally guaranteed to the Bank all indebtedness of Builders Unlimited, whether then existing or thereafter arising. Copies of the Guaranty Agreements are attached as **Exhibit E** and incorporated herein by reference.

15. Note #49, Note #50/67, and the Guaranty Agreements are in default for nonpayment.

16. Builders Unlimited is in breach of its obligations to the Bank under Note #49 and Note #50/67.

17. Chad Johnson and Kelly Johnson are in breach of their obligations to the Bank under their respective Guaranty Agreement.

18. Per the terms of Note #49 and Note #50/67, after default, interest accrues on the principal plus the then accrued and unpaid interest, at a default rate equal to the Bank's Prime Rate, as announced from time to time, plus 5% per annum until paid in full. Ex. B, C, pg. 2.

19. Under the terms of the Loan Agreement, Builders Unlimited, Chad Johnson and Kelly Johnson are responsible for payment of the Bank's costs of collection of the indebtedness due thereunder, including its attorneys' fees and expenses. Ex. A, § 10.08.

#### **PRAYER FOR RELIEF**

WHEREFORE, Branch Banking and Trust Company, by its counsel, respectfully moves this Court for entry of an order granting a money judgment in its favor against Builders Unlimited, Inc., Chad E. Johnson, and Kelly K. Johnson:

a) on Note #49, in the principal sum of \$693,017.90, plus accrued interest of \$371,421.01 through May 24, 2018, and fees of \$71,578.58, for a total of \$1,136,017.49,

together with pre- and post-judgment interest after May 24, 2018 at a per annum rate equal to the Bank's Prime Rate, as announced from time to time, plus 5% until paid,

b) on Note #50/67, in the principal sum of \$53,526.00, plus accrued interest of \$16,322.09 through May 24, 2018, for a total of \$69,848.09, together with pre- and post-judgment interest after May 24, 2018 at a per annum rate equal to the Bank's Prime Rate, as announced from time to time, plus 5% until paid, and

c) for the Bank's reasonable attorney's fees and costs incurred in attempting to collect the indebtedness due under Note #49, Note #50/67, and the Guaranty Agreements.

Branch Banking and Trust Company further requests such other and further relief as the Court deems just and proper.

Dated this 24<sup>th</sup> day of May, 2018.

**BRANCH BANKING AND TRUST COMPANY**

**By: Spilman Thomas & Battle, PLLC**

/s/ Debra Lee Allen

Debra Lee Allen (W.Va. Bar No. 9838)

48 Donley Street, Suite 800 (26501)

P.O. Box 615

Morgantown, WV 26507-0615

*Remote Location:*

292 Pleasant Valley Drive

Charles Town, West Virginia 25414

304.291.7951

304.291.7979 (*facsimile*)

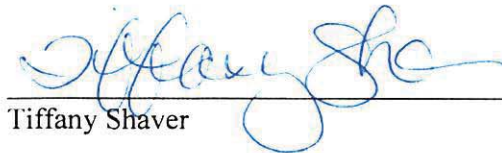
[dallen@spilmanlaw.com](mailto:dallen@spilmanlaw.com)

**VERIFICATION**

**STATE OF GEORGIA**

**COUNTY OF FULTON, to-wit:**

This day personally appeared before me, the undersigned authority, Tiffany Shaver, who first being duly sworn by me, deposes and says that she is a Vice President and Asset Manager for Branch Banking and Trust Company; that as such, she is duly authorized to execute this Verification on its behalf; that she has read the foregoing Verified Complaint and knows the contents thereof; that the facts set forth therein are true, except as to such matters as are therein stated to be upon information and belief; and that insofar as matters are therein stated to be upon information and belief, she believes them to be true.

  
Tiffany Shaver

Taken, subscribed and sworn to before the undersigned Notary Public on this 21<sup>st</sup> day of May, 2018.  
~~April~~

My commission expires: 8/7/2020.

  
NOTARY PUBLIC

